

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT

In re:

Aaron Shelby McCrary,

Debtor.

Case No. 12-56446

Chapter 7

Hon. Walter Shapero

**OPINION GRANTING TRUSTEE’S MOTION FOR SANCTIONS AGAINST
BANKRUPTCY PETITION PREPARERS**

Introduction

The Debtor filed the present Chapter 7 bankruptcy, wherein the United States Trustee filed a motion for sanctions against the bankruptcy petition preparer(s) allegedly utilized by the Debtor. For the following reasons, the Court grants the Trustee’s motion and assesses such sanctions.

Jurisdiction

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), over which the Court has jurisdiction pursuant to 28 U.S.C. § 1334(a), § 157(a), and District Court Local Rule 83.50.

Background

Aaron Shelby McCrary (“Debtor”) filed this Chapter 7 bankruptcy *in pro per* on July 12, 2012. On that same date, Debtor also filed his “Declaration Under Penalty of Perjury for Debtor Without an Attorney” indicating (a) he received assistance preparing his documents from an entity by the name of “Urgent Info Solutions, Inc.” located in Dearborn, Michigan and (b) he paid the sum of \$600 for these services.

Incident to Debtor's application to waive the filing fee, the Court held a hearing on September 27, 2012. The Court granted the fee waiver, and also questioned Debtor regarding his use of the bankruptcy petition preparer services. Debtor complained of the poor quality of these services and provided the Court with substantial information regarding the identities of the preparers. Debtor's estate was fully administered shortly thereafter and Debtor received his discharge. The United States Trustee ("Trustee") moved and obtained the reopening of the case. Trustee then filed the present motion for sanctions against the alleged preparers, "Urgent Solutions, Inc., Urgent Bankruptcy Solutions, Inc., and its affiliates and representatives." Thereafter, an answer was filed in the form of a letter on "Urgent Solutions Inc." stationary signed by Lloyd Travis ("Mr. Travis"). Trustee served subpoenas on Debtor, Mr. Travis, and Toni Glover (who was also alleged to be involved in the preparation services) ("Ms. Glover") for an evidentiary hearing to be held on February 13, 2013.¹

At the evidentiary hearing, Ms. Glover did not appear. Mr. Travis appeared both on his own behalf and on behalf of the corporate entity Urgent Solutions Inc. (raising a potential issue as to whether he, not an attorney, could appear on behalf of a corporation). However, because the Trustee's motion referenced certain entities and "their affiliates and representatives," and because Trustee raised no objection in this regard, the Court allowed Mr. Travis to present evidence and defenses both on his own behalf and on that of the indicated entity. It appears that another entity by the somewhat similar name "Urgent Information Solutions Inc.," which Mr. Travis started and was President of, is no longer in existence, having being dissolved in 2010.

¹ The Court concludes that Ms. Glover is the "Toni" referred to in Trustee's motion and, as such, she and her activities are properly before this Court for action pursuant to the motion.

The entity “Urgent Solutions Inc.” was incorporated in July 2011 and remains active. Mr. Travis is its principal officer and resident agent, and the Court concludes this particular entity was the one in existence throughout the relevant period (hereinafter, “Urgent Solutions”).

Debtor’s Testimony

Debtor’s testified that (a) he saw an advertisement by Urgent Solutions and called the phone number; (b) he spoke with Mr. Travis, who informed him that bankruptcy preparation services would cost \$600; and (c) Mr. Travis did not provide any particular information about the bankruptcy process other than that Debtor should provide Mr. Travis with any and all bills that Debtor wanted “covered under” the bankruptcy. Debtor provided these documents and was informed that after Debtor had made payment in full, somebody would be contacting him regarding document preparation. He states that he met Mr. Travis at Urgent Solutions’ office and gave him \$300 in cash. Trustee’s Exhibit 2 is a receipt for this cash payment, which also states that the remaining balance due was \$299. Debtor testified this receipt was true and accurate and that it was delivered to him by Mr. Travis. Trustee’s Exhibit 3 is an “independent contracting agreement” between Debtor and “Urgent Bankruptcy Solutions, Inc.” which Debtor indicates was also delivered to him (this does not appear to be an actual entity, but rather a trade name of Urgent Solutions). Debtor testified that he made a further visit to Urgent Solutions, that time tendering the remaining owing payment to a secretary (though it is unclear whether this payment, made in cash, was \$299 or \$300).

Thereafter, Ms. Glover, who is not an attorney, called Debtor and provided him with information regarding bankruptcy procedures and requirements. Sometime thereafter, Debtor was informed that he could pick up his prepared documents from Urgent Solutions’ office, the

same office at which he made his payments. He picked them up and when he arrived at the Court to file the documents himself, the Clerk's Office would not accept many of them because they were not on up-to-date forms. Debtor indicated that he then obtained the assistance of employees of the Clerk's Office in attaining the proper forms and filled them out himself. Debtor had no contact with Ms. Glover or Mr. Travis after initially picking up the prepared documents.

Mr. Travis' Testimony

Mr. Travis testified that (a) Urgent Solutions, both the present entity and its predecessor, was a "consulting and referral company" that did not prepare bankruptcy filings itself (a fact that he indicated was made clear to customers, including Debtor); (b) Urgent Solutions would refer individuals to preparers and would take a fee for this service; (c) Urgent Solutions made a variety of other referrals, including referrals to credit repair agencies, movers, and plumbers; (d) Urgent Solutions performed only limited referral work in the bankruptcy field, having had only about two or three such customers; (e) Mr. Travis was given a "skit" from another bankruptcy petition preparer service that he used to attract customers; and (f) he utilized a questionnaire form that he gave to Debtor and that was used, at least to some degree, to prepare Debtor's bankruptcy documents.²

² Debtor testified (in passing and without going into detail) that Mr. Travis did not provide him with a questionnaire and gave him no information about bankruptcy other than the cost of document preparation. Although Debtor's testimony conflicts with that of Mr. Travis in this regard, this Court is inclined to believe Mr. Travis' account given that Mr. Travis (a) acknowledged the existence and use of the questionnaire; (b) testified that he used the "skit" to recruit customers; and (c) asked Debtor to gather and turn over bills as part of the bankruptcy preparation process, which necessarily must have involved Mr. Travis questioning and/or advising Debtor to some degree. As such, Mr. Travis' own admissions are deemed sufficient to establish by a preponderance that he did indeed question and/or persuade Debtor regarding filing for bankruptcy and obtaining document preparation services.

With regard to his specific relationship with Debtor and Ms. Glover, Mr. Travis stated or admitted that (a) the receipt was indeed issued by Urgent Solutions and that he personally received the first payment from Debtor; (b) he had referred individuals to Ms. Glover at least once before; (c) it was Ms. Glover who directed him to charge Debtor the total amount of \$599 and to collect the \$300 as a deposit; (d) he collected those amounts, kept \$100 for his referral services, and tendered the remaining portion of the first payment to Ms. Glover; (e) Ms. Glover would only agree to meet him in a public place, a Meijer store, and would only deal in cash; (f) he met her a second time to give her Debtor's bills; and (g) that Ms. Glover dropped off the prepared bankruptcy forms at Urgent Solutions' office.

Mr. Travis also testified that Ms. Glover has disappeared and that he is no longer able to contact her, that he was no longer involved in bankruptcy referrals as a direct result of Trustee's investigations, and that he complied fully with Trustee's investigation and document requests.

Other Evidence

Trustee's exhibits include documents incident to another Chapter 7 bankruptcy in this District, Minnie Marian Townsend (No. 12-65079, Shefferly, C.J.), in which Trustee pursued a similar action against Ms. Glover. These exhibits include the docket list (Exh. 4), Ms. Townsend's disclosures of her use of Ms. Glover's preparation services (Exh. 5, 7, 8), and the order disallowing Ms. Glover's fee and directing its turnover to Trustee (Exh. 6). Testimony indicates that Ms. Glover did not comply with the terms of that order. It appears that Ms. Townsend made payments incident to her use of Ms. Glover's services at the same address of Urgent Solutions, where Debtor in this matter also made payments (Exh. 8, email to Trustee's

office). Other evidence includes an online Yellow Pages advertisement of “Urgent Bankruptcy Solutions” indicating its phone number (Exh. 9).

Discussion

11 U.S.C. § 110 was added to the Bankruptcy Code as part of Bankruptcy Reform Act of 1994 and was later amended as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Its purpose is to address abuses perpetrated upon consumer-debtors by non-attorney bankruptcy petition preparers. In re Jolly, 313 B.R. 295, 300 (Bankr. S.D. Iowa 2004)(citing Consumer Seven Corp. v. U.S. Trustee (In re Fraga), 210 B.R. 812, 816-17 (B.A.P. 9th Cir. 1997)). The rationale was explained:

This section adds a new section to chapter 1 of title 11 United States Code to create standards and penalties pertaining to bankruptcy petition preparers. Bankruptcy petition preparers not employed or supervised by any attorney have proliferated across the country. While it is permissible for a petition preparer to provide services solely limited to typing, far too many of them also attempt to provide legal advice and legal services to debtors. These preparers often lack the necessary legal training and ethics regulation to provide such services in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system.

H.R. Rep. 103-834, 103rd Cong., 2nd Sess. at 40-42 (Oct. 4, 1994). As previously discussed by this Court, §110 allows petition preparers to have only the very limited role of scrivener, transcribing, and typing a debtor’s bankruptcy forms. In re Warfield, 09-75993 at *6 (Bankr. E.D. Mich. 2010)(quoting In re Guttierrez, 248 B.R. 287, 297-298 (Bankr. W.D. Tex. 2000); In re Gomez, 259 B.R. 379, 385 (Bankr. D. Colo. 2001)). However, bankruptcy petition preparers often fail to comply with § 110’s regulations, a problem that is especially pronounced in this District. See generally In re Hutchinson, 12-44688 (Bankr. E.D. Mich. 2013) (Shefferly, C.J.)

(granting, in part, the U.S. Trustee's various consolidated motions filed in 13 separate bankruptcy cases against four petition preparers who failed to comply with § 110); In re Guthrie, 2:13-cv-11964 (E.D. Mich. 2013) (petition preparer repeatedly violated § 110, settled Trustee's 19 consolidated sanctions motions for total amount of \$38,500); Notice Regarding Prohibited Bankruptcy Petition Preparers, Bankr. E.D. Mich. Memorandum, February 11, 2013, *available at* <http://www.mieb.uscourts.gov/news/updated-notice-regarding-prohibited-bankruptcy-petition-preparers> (which as of June 13, 2013, lists 67 persons and entities that have been prohibited from preparing bankruptcy documents in this District).

A "bankruptcy petition preparer" is defined as "a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing[.] § 110(a)(1). The Bankruptcy Code defines "person" as also including corporations. Once a person or entity is deemed a "bankruptcy petition preparer," it is subject to a variety of statutory prohibitions and regulations under § 110. The question here is whether Mr. Travis' activities, characterized by him as strictly "referrals" fall under that heading, in light of the statute providing that a preparer becomes subject to disclosure regulations "[b]efore preparing any document for filing *or accepting any fees from or on behalf of a debtor*[.]" § 110(b)(2)(A).

Various petition preparers across the country have attempted to evade these important regulations by characterizing their services as something other than bankruptcy petition preparation. E.g., Ferm v. U.S. (In re Crowe), 243 B.R. 43 (B.A.P. 9th Cir. 2000)(preparer who sold self-help bankruptcy book and offered free help filling out forms held to be subject to

§ 110); In re Landry, 250 B.R. 441 (Bankr. M.D. Fla. 2000)(preparer held liable although most of fee paid was designated as membership fee for a “document preparation club”). It is important, for the purposes of such analysis, to focus on the substance of the preparation services, rather than their form.

Courts having dealt with the issue of “preparer referral” services have held that the referring party can be held liable if it acts in a manner that violates § 110. See In re Soberanis-Soberanis, 2012 WL 1229894 (Bankr. D. Colo. 2012); In re Thomas, 2007 WL 1594319 (Bankr. N.D. Ohio 2007); In re Duran, 347 B.R. 760 (Bankr. D. Colo. 2006). Therefore, with regard to the referring party’s conduct, the Court views the following non-exclusive factors to be determinative: (a) whether it collected money from the debtor, (b) whether it engaged in any conduct defined as unauthorized practice of law or otherwise in violation of § 110 or related rules; (c) whether it encouraged or otherwise played an integral role in allowing another party to violate any such rules; (d) whether it acted as the “point of contact” or liaison between the debtor and the preparer; (e) the extent to which it acted in concert with the preparer; and (f) the extent of the preparer’s control over the referring party, i.e. whether there exists an agency or employment relationship.

In this case, it is evident that Mr. Travis’ involvement in the transaction indicates that he acted as a bankruptcy petition preparer. By his own admission collected money (some \$600) from Debtor, of which he kept \$100 as his “referral” fee, and turned the remainder over to Ms. Glover. He did this at her direction. In this District, Administrative Order No. 10-21 sets the presumptive maximum allowable fee a petition preparer can charge at \$100. In collecting a fee many times in excess of that amount, Mr. Travis violated that Administrative Order and made it

possible for Ms. Glover to do the same. Mr. Travis also admitted that he provided Debtor with a questionnaire incident to his bankruptcy filing. Such conduct is deemed both a violation of § 110 and unauthorized practice of law. In re Soberanis-Soberanis, 2012 WL 1229894 (Bankr. D. Colo. 2012); In re Agyekum, 225 B.R. 695, 702 (B.A.P. 9th Cir. 1998); cf. Taub v. Weber, 366 F.3d 966, 969 (9th Cir. 2004)(quoting Oregon State Bar v. Sec. Escrows, Inc., 377 P.2d 334, 339 (1962)(“If the customer does not know what forms to use or how to direct their completion, then he needs legal advice. If the customer does know what he wants and how he wants it done, he needs only a scrivener.”)).

Mr. Travis also gathered financial documents from Debtor. He acted as the sole point of contact between Debtor and Ms. Glover. Indeed, Debtor never met Ms. Glover. Mr. Travis acted as the sole intermediary for the exchanges of money, financial documents, and the prepared bankruptcy petition documents. In this Court’s view, even merely providing blank questionnaire forms (the choice of which, in the first instance, is that of the provider) designed to and for the very purpose of enabling a debtor to marshal the required facts and, based thereon, to make certain choices in order to consequently and accurately fill out all of the documents necessary to file an acceptable bankruptcy (i.e. a form containing questions focused on, and directed to elicitation of, answers and information needed to complete those documents) when combined with the other facts in this case, is not substantively different than if the provider of the form instead actually sat down with the debtor, orally asked those same questions, and elicited that same information, from which the provider of the form actually filled out the bankruptcy documents. Assembling and providing the information is, of course, only the initial step involved in the process, but it is an integral part of it. Considering the provision of the

questionnaire with “referrals” of both Debtor and Debtor’s filled-out questionnaire, as is the case here, to someone else who possibly anonymously proceeds to fill out the bankruptcy documents essentially based entirely on the answers to the supplied questionnaire, plus any other provided documentation (possibly either mentioned or called for in the questionnaire, or stated as being needed by the provider of the form) and taking into account the payment arrangements and the other facts in this case, what is clear is that there exists a series of related and integrated actions when considered together, as they must be, engaged in jointly and severally by both the provider of the form and the preparer of the documents, which violate the statute.

Mr. Travis insists that he acted solely as an independent contractor who referred Debtor to Ms. Glover. Quite apart from the legal fact that “ independent contractors” can be and often are agents, the facts here demonstrate that, regardless of whether Mr. Travis was or was not an independent contractor, he essentially undertook to make a profit in the bankruptcy preparation field but neglected to comply with the appropriate regulations.

Mr. Travis complains that Trustee is using him as a “scapegoat” for Ms. Glover’s wrongful conduct. To be sure, Mr. Travis is not the only guilty party in this matter. That a “scapegoat” may be defined as one who is blamed for others’ actions does not, however, excuse the “scapegoat,” whose own personal actions or involvement made him also subject to blame.

The Court finds that Mr. Travis, individually, and the entity known or doing business as Urgent Solutions Inc., jointly and severally violated the following requirements: failure to sign the bankruptcy documents (§ 110(b)), failure to disclose his/its identity (§110(c)), and impermissibly giving legal advice (§ 101(e)). Similarly, because Ms. Glover failed to respond to either Trustee’s motion or subpoena to appear at the hearing, the Court finds that she is in

default, is in contempt of Court for failing to appear in response to the subpoena, and, based on the recited proofs, is also in violation of the above-referenced Bankruptcy Code sections.

Damages

Pursuant to § 110(l)(1), “[a] bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure.” Trustee also pursued treble damages pursuant to § 110(l)(2)(D), which states that “[t]he court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer... prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.” Fines under § 110(l) are to be payable to Trustee. § 110(l)(4)(A). Trustee also sought damages in the amount of \$2,000 payable to Debtor pursuant to § 110(i)(1)(b) for violations of the statute or for fraudulent, unfair, or deceptive acts. The Court grants, in part, the relief sought by Trustee.

Pursuant to § 110(l)(1), the Court assesses damages against Mr. Travis and Urgent Solutions Inc. (and the related named entities), jointly and severally, in the amount of \$150 for each of the three violations, which the Court trebles pursuant to § 110(l)(2)(D) for a total sum of \$1,350 that shall be payable to Trustee. Pursuant to § 110(i)(1)(b), the Court also assesses damages against them, jointly and severally, in the amount of \$2,000 that shall be payable to Debtor.

Pursuant to § 110(l)(1), the Court assesses damages against Ms. Glover in the amount of \$500 for each of her three violations, which the Court trebles pursuant to § 110(l)(2)(D) for a total sum of \$4,500 that shall be payable to Trustee. Pursuant to § 110(i)(1)(b), the Court also assesses damages against Ms. Glover in the amount of \$2,000 that shall be payable to Debtor.

Should Trustee also wish to pursue a contempt remedy against Ms. Glover, Trustee may do so, but by separate motion. Trustee shall present an appropriate order or orders.

Signed on June 13, 2013

/s/ Walter Shapero
Walter Shapero
United States Bankruptcy Judge